

HOUSE BILL No. 1346

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-2-5.

Synopsis: Loan broker commission. Creates the loan broker commission. Requires the commission to oversee the: (1) licensing of loan brokers; (2) registration of originators; and (3) registration of principal managers. (Current law requires the securities commissioner of the office of the secretary of state to oversee the licensing and registration of loan brokers, originators, and principal managers.)

Effective: July 1, 2008.

Burton

January 16, 2008, read first time and referred to Committee on Financial Institutions.

C
o
p
y



Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1346

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-2-5-0.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2008]: **Sec. 0.5. "Commission" refers to the Indiana loan broker**
4 **commission established by IC 23-2-5-3.3.**

5 SECTION 2. IC 23-2-5-3, AS AMENDED BY P.L.230-2007,
6 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2008]: Sec. 3. (a) As used in this chapter, "certificate of
8 registration" means a certificate issued by the ~~commissioner~~
9 **commission** authorizing an individual to engage in origination
10 activities on behalf of a licensee.

11 (b) As used in this chapter, "creditor" means a person:

12 (1) that loans funds of the person in connection with a loan; and

13 (2) to whom the loan is initially payable on the face of the note or
14 contract evidencing the loan.

15 (c) As used in this chapter, "license" means a license issued by the
16 ~~commissioner~~ **commission** authorizing a person to engage in the loan
17 brokerage business.



C
o
p
y

(d) As used in this chapter, "licensee" means a person that is issued a license under this chapter.

(e) As used in this chapter, "loan broker" means any person who, in return for any consideration from any source procures, attempts to procure, or assists in procuring a loan from a third party or any other person, whether or not the person seeking the loan actually obtains the loan. "Loan broker" does not include:

(1) any supervised financial organization (as defined in IC 24-4.5-1-301(20)), including a bank, savings bank, trust company, savings association, or credit union;

(2) any other financial institution that is:

(A) regulated by any agency of the United States or any state; and

(B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;

(3) any insurance company; or

(4) any person arranging financing for the sale of the person's product.

(f) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

(g) As used in this chapter, "origination activities" means communication with or assistance of a borrower or prospective borrower in the selection of loan products or terms.

(h) As used in this chapter, "originator" means a person engaged in origination activities. The term "originator" does not include a person who performs origination activities for any entity that is not a loan broker under subsection (e).

(i) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

(j) As used in this chapter, "registrant" means an individual who is registered:

(1) to engage in origination activities under this chapter; or

(2) as a principal manager.

(k) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls ten percent (10%) or more of the equity interest in a loan broker licensed or required to be licensed under this chapter, regardless of whether the person owns or controls the equity interest through one (1) or more other persons or

C
o
p
y



one (1) or more proxies, powers of attorney, or variances.

(l) As used in this chapter, "principal manager" means an individual who:

(1) has at least three (3) years of experience:

(A) as a loan broker; or

(B) in financial services;

that is acceptable to the ~~commissioner~~; **commission**; and

(2) is principally responsible for the supervision and management of the employees and business affairs of a licensee.

SECTION 3. IC 23-2-5-3.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 3.3. (a) The Indiana loan broker commission is established.**

(b) The commission consists of the following:

(1) The commissioner or a designee of the commissioner.

(2) Nine (9) district members. Each Indiana congressional district must be represented by one (1) individual appointed under this subdivision.

(3) One (1) loan broker at large.

(4) Two (2) citizen members at large.

A member described under subdivision (2) must be a resident of the represented district for not less than one (1) year. A member described in subdivision (2) or (3) must have engaged in the loan brokerage business for not less than five (5) years.

(c) Citizen members described under subsection (b)(4):

(1) shall be appointed to represent the general public;

(2) must be residents of Indiana; and

(3) must have never been associated with the loan brokerage business in any way other than as a consumer.

(d) Each member of the commission described under subsection (b)(2) through (b)(4):

(1) shall be appointed by the governor; and

(2) shall serve a four (4) year term.

If a successor has not been appointed, the current member shall serve until a successor is appointed and qualified. If a vacancy of a member described in subsection (b)(2) through (b)(4) occurs on the commission, the governor shall appoint an individual to serve the unexpired term of the previous member and until a successor is appointed and qualified.

(e) A member of the commission may not hold a state or federal elective office.

SECTION 4. IC 23-2-5-3.5 IS ADDED TO THE INDIANA CODE

C
o
p
y



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2008]: **Sec. 3.5. (a) The commissioner or the designee of the
3 commissioner is the chair of the commission.**

4 **(b) The commission shall elect from its membership a vice chair.
5 The vice chair shall serve in that capacity for one (1) year and until
6 a successor is elected. The vice chair may serve consecutively not
7 more than two (2) terms in that capacity.**

8 **(c) The chair shall preside at all meetings. The vice chair shall
9 preside at meetings in the absence of the chair and shall perform
10 other duties as the chair may direct.**

11 **(d) The chair shall:**

12 **(1) provide reasonable notice to all commission members of
13 the date, time, and place of each meeting;**

14 **(2) keep a record of all meetings, of all votes taken by the
15 commission, and all other proceedings;**

16 **(3) keep a current file of all licenses, licensees, registrations,
17 and registrants; and**

18 **(4) perform any other duties that the commission may
19 prescribe.**

20 SECTION 5. IC 23-2-5-3.7 IS ADDED TO THE INDIANA CODE
21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
22 1, 2008]: **Sec. 3.7. (a) The commission shall meet at least annually
23 and at the call of the chair or at the written request of any eight (8)
24 members of the commission. The chair shall establish the date,
25 time, and place of all meetings.**

26 **(b) The presence of a majority of the current members of the
27 commission at a meeting constitutes a quorum for the purpose of
28 transacting business. A majority vote of all members present at a
29 meeting at which there is a quorum is necessary to bind the
30 commission.**

31 **(c) Any action required or permitted to be taken at a meeting of
32 the commission may be taken without a meeting if, prior to that
33 action:**

34 **(1) a written consent to the action, either executed as a single
35 document or in counterparts, is signed by all members of the
36 commission; or**

37 **(2) all members orally consent to the action and subsequently
38 confirm that consent in writing.**

39 **The written consent or confirmation shall set forth the action
40 under consideration and shall be filed with the minutes of the
41 meetings which are kept by the chair. A written consent or a
42 confirmed oral consent shall be treated for all purposes as a**

**C
o
p
y**



1 unanimous vote of the members and as though the vote had taken
2 place at a regular meeting of the commission.

3 SECTION 6. IC 23-2-5-3.8 IS ADDED TO THE INDIANA CODE
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 2008]: Sec. 3.8. (a) Each member who is not a state employee is
6 entitled:

7 (1) to the minimum salary per diem as provided in
8 IC 4-10-11-2.1(b); and

9 (2) to reimbursement for traveling and other expenses, as
10 provided in the state travel policies and procedures
11 established by the Indiana department of administration and
12 approved by the budget agency.

13 (b) Each member of the commission who is a state employee is
14 entitled to reimbursement for traveling expenses and other
15 expenses actually incurred in connection with the member's duties,
16 as provided in the state travel policies and procedures established
17 by the Indiana department of administration and approved by the
18 budget agency.

19 (c) The compensation and expenses of the commission members
20 and the expenses of the commission shall be paid out of the state
21 general fund as provided under section 7 of this chapter.

22 SECTION 7. IC 23-2-5-4, AS AMENDED BY P.L.230-2007,
23 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2008]: Sec. 4. (a) Any person desiring to engage or continue
25 in the loan brokerage business shall apply to the ~~commissioner~~
26 **commission** for a license under this chapter.

27 (b) An individual desiring to be employed by a licensee to engage
28 in origination activities shall apply to the ~~commissioner~~ **commission**
29 for registration under this chapter.

30 (c) Any individual desiring to be employed by a licensee as a
31 principal manager shall apply to the ~~commissioner~~ **commission** for
32 registration under this chapter.

33 SECTION 8. IC 23-2-5-5, AS AMENDED BY P.L.230-2007,
34 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2008]: Sec. 5. (a) An application for license or renewal of a
36 license must contain:

37 (1) consent to service of process under subsection (h);

38 (2) evidence of the bond required in subsection (e);

39 (3) an application fee of four hundred dollars (\$400), plus two
40 hundred dollars (\$200) for each ultimate equitable owner;

41 (4) an affidavit affirming that none of the applicant's ultimate
42 equitable owners, directors, managers, or officers have been

C
o
p
y



convicted, in any jurisdiction, of an offense involving fraud or deception that is punishable by at least one (1) year of imprisonment, unless waived by the ~~commissioner~~ **commission** under subsection (f);

(5) evidence that the applicant, if the applicant is an individual, has completed the education requirements under section 21 of this chapter;

(6) the name and registration number for each originator to be employed by the licensee;

(7) the name and registration number for each principal manager; and

(8) for each ultimate equitable owner, the following information:

(1) ~~(A)~~ **(A)** The name of the ultimate equitable owner.

(2) ~~(B)~~ **(B)** The address of the ultimate equitable owner, including the home address of the ultimate equitable owner if the ultimate equitable owner is an individual.

(3) ~~(C)~~ **(C)** The telephone number of the ultimate equitable owner, including the home telephone number if the ultimate equitable owner is an individual.

(4) ~~(D)~~ **(D)** The ultimate equitable owner's Social Security number and date of birth, if the ultimate equitable owner is an individual.

(b) An application for registration as an originator shall be made on a registration form prescribed by the ~~commissioner~~ **commission**. The application must include the following information for the individual that seeks to be registered as an originator:

(1) The name of the individual.

(2) The home address of the individual.

(3) The home telephone number of the individual.

(4) The individual's Social Security number and date of birth.

(5) The name of the:

(A) licensee; or

(B) applicant for licensure;

for whom the individual seeks to be employed as an originator.

(6) Consent to service of process under subsection (h).

(7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.

(8) An application fee of one hundred dollars (\$100).

(9) All registration numbers previously issued to the individual under this chapter, if applicable.

(c) An application for registration as a principal manager shall be made on a registration form prescribed by the ~~commissioner~~.

C
o
p
y



commission. The application must include the following information for the individual who seeks to be registered as a principal manager:

- (1) The name of the individual.
- (2) The home address of the individual.
- (3) The home telephone number of the individual.
- (4) The individual's Social Security number and date of birth.
- (5) The name of the:
 - (A) licensee; or
 - (B) applicant for licensure;
 for whom the individual seeks to be employed as a principal manager.
- (6) Consent to service of process under subsection (h).
- (7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.
- (8) Evidence that the individual has at least three (3) years of experience in the:
 - (A) loan brokerage; or
 - (B) financial services; business.
- (9) An application fee of two hundred dollars (\$200).
- (10) All registration numbers previously issued to the individual, if applicable.

(d) The ~~commissioner~~ **commission** shall require an applicant for registration as:

- (1) an originator under subsection (b); or
- (2) a principal manager under subsection (c);

to pass a written examination prepared and administered by the ~~commissioner~~ **commission** or an agent appointed by the ~~commissioner~~ **commission**.

(e) A licensee must maintain a bond satisfactory to the ~~commissioner~~ **commission** in the amount of fifty thousand dollars (\$50,000), which shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee.

(f) The ~~commissioner~~ **commission** shall issue a license and license number to an applicant that meets the licensure requirements of this chapter. Whenever the registration provisions of this chapter have been complied with, the ~~commissioner~~ **commission** shall issue a certificate of registration and registration number authorizing the registrant to:

- (1) engage in origination activities; or
- (2) act as a principal manager;

whichever applies.

C
o
p
y



(g) Licenses and initial certificates of registration issued by the ~~commissioner~~ **commission** are valid until January 1 of the second year after issuance.

(h) Every applicant for licensure or registration or for renewal of a license or a registration shall file with the ~~commissioner~~, **commission**, in such form as the ~~commissioner~~ **commission** by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

(i) Upon good cause shown, the ~~commissioner~~ **commission** may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

(j) Whenever an initial or a renewal application for a license or registration is denied or withdrawn, the ~~commissioner~~ **commission** shall retain the initial or renewal application fee paid.

(k) The ~~commissioner~~ **commission** shall require each:

(1) equitable owner; and

(2) applicant for registration as:

(A) an originator; or

(B) a principal manager;

to undergo a criminal background check at the expense of the equitable owner or applicant.

(l) The ~~commissioner~~ **commission** may check the qualifications, background, licensing status, and service history of each:

(1) equitable owner; and

(2) applicant for registration as:

(A) an originator; or

(B) a principal manager;

by accessing, upon availability, a multistate automated licensing system for mortgage brokers and originators, including the National Mortgage Licensing Database proposed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The equitable owner or the applicant shall pay any fees or costs associated with a check conducted under this subsection.

SECTION 9. IC 23-2-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. A licensee may not continue engaging in the loan brokerage business unless the licensee's license is renewed biennially. A registrant may not continue engaging in origination activities unless the registrant's certificate of registration is renewed biennially. A licensee shall renew its license and the

C
o
p
y



certificates of registration of its registrant employees by filing with the ~~commissioner~~, **commission**, at least thirty (30) days before the expiration of the registration, an application containing any information the ~~commissioner~~ **commission** may require to indicate any material change from the information contained in the applicant's original application or any previous application.

SECTION 10. IC 23-2-5-7, AS AMENDED BY P.L.27-2007, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) The loan broker regulation account is created in the state general fund. The money in the loan broker regulation account may be used only for the regulation of loan brokers under this chapter. The loan broker regulation account shall be administered by the treasurer of state. The money in the loan broker regulation account does not revert to any other account within the state general fund at the end of a state fiscal year.

(b) Except as provided in subsection (c), all fees and funds accruing from the administration of this chapter shall be accounted for by the ~~commissioner~~ **commission** and shall be deposited with the treasurer of state who shall deposit them in the loan broker regulation account in the state general fund.

(c) All expenses incurred in the administration of this chapter shall be paid from appropriations made from the state general fund. However, costs of investigations and civil penalties recovered under this chapter shall be deposited in the securities division enforcement account created under IC 23-19-6-1(f). The funds in the securities division enforcement account shall be available, with the approval of the budget agency, to augment and supplement the funds appropriated for the administration of this chapter.

SECTION 11. IC 23-2-5-9.1, AS ADDED BY P.L.230-2007, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9.1. (a) As used in this section, "appraisal company" means a person that employs or retains the services of one (1) or more real estate appraisers.

(b) As used in this section, "immediate family", with respect to an individual, refers to:

- (1) the individual's spouse who resides in the individual's household; and
- (2) any dependent child of the individual.

(c) As used in this section, "real estate appraiser" means a person who:

- (1) is licensed as a real estate broker under IC 25-34.1 and performs real estate appraisals within the scope of the person's

C
o
p
y



license; or

(2) holds a real estate appraiser license or certificate issued under IC 25-34.1-8.

(d) A person licensed or registered under this chapter, or a person required to be licensed or registered under this chapter, shall not knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate appraiser with respect to the value of any real estate offered as security for a mortgage loan.

(e) Except as provided in subsection (f), after June 30, 2007:

(1) a person licensed or registered under this chapter, or a person required to be licensed or registered under this chapter;

(2) a member of the immediate family of:

(A) a person licensed or registered under this chapter; or

(B) a person required to be licensed or registered under this chapter; or

(3) a person described in subdivision (1) or (2) in combination with one (1) or more other persons described in subdivision (1) or (2);

may not own or control a majority interest in an appraisal company.

(f) This subsection applies to a person or combination of persons described in subsection (e) who own or control a majority interest in an appraisal company on June 30, 2007. The prohibition set forth in subsection (e) does not apply to a person or combination of persons described in this subsection, subject to the following:

(1) The interest in the appraisal company owned or controlled by the person or combination of persons described in subsection (e) shall not be increased after June 30, 2007.

(2) The interest of a person licensed or registered under this chapter, or of a person required to be licensed or registered under this chapter, shall not be transferred to a member of the person's immediate family.

(3) If the ~~commissioner~~ **commission** determines that any person or combination of persons described in subsection (e) has violated this chapter, the ~~commissioner~~ **commission** may order one (1) or more of the persons to divest their interest in the appraisal company. The ~~commissioner~~ **commission** may exercise the remedy provided by this subdivision in addition to, or as a substitute for, any other remedy available to the ~~commissioner~~ **commission** under this chapter.

SECTION 12. IC 23-2-5-10, AS AMENDED BY P.L.230-2007, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

C
o
p
y



JULY 1, 2008]: Sec. 10. (a) Whenever it appears to the ~~commissioner~~ **commission** that a person has engaged in or is about to engage in an act or a practice constituting a violation of this chapter or a rule or an order under this chapter, the ~~commissioner~~ **commission** may investigate and may issue, with a prior hearing if there exists no substantial threat of immediate irreparable harm or without a prior hearing, if there exists a substantial threat of immediate irreparable harm, orders and notices as the ~~commissioner~~ **commission** determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the ~~commissioner~~ **commission** may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter.

(b) Upon the issuance of an order or notice without a prior hearing by the ~~commissioner~~ **commission** under subsection (a), the ~~commissioner~~ **commission** shall promptly notify the respondent and, if the subject of the order or notice is a registrant, the licensee for whom the registrant is employed:

- (1) that the order or notice has been issued;
- (2) of the reasons the order or notice has been issued; and
- (3) that upon the receipt of a written request the matter will be set down for a hearing to commence within fifteen (15) business days after receipt of the request unless the respondent consents to a later date.

If a hearing is not requested and not ordered by the ~~commissioner~~ **commission**, an order remains in effect until it is modified or vacated by the ~~commissioner~~ **commission**. If a hearing is requested or ordered, the ~~commissioner~~ **commission**, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(c) The ~~commissioner~~ **commission** may deny, suspend, or revoke the license of a licensee or the registration of a registrant if the licensee, the registrant, or an ultimate equitable owner of a licensee:

- (1) fails to maintain the bond required under section 5 of this chapter;
- (2) has, within the most recent ten (10) years:
 - (A) been the subject of an adjudication or a determination by:
 - (i) a court with jurisdiction; or
 - (ii) an agency or administrator that regulates securities, commodities, banking, financial services, insurance, real estate, or the real estate appraisal industry;

C
o
p
y



- 1 in Indiana or in any other jurisdiction; and
 2 (B) been found, after notice and opportunity for hearing, to
 3 have violated the securities, commodities, banking, financial
 4 services, insurance, real estate, or real estate appraisal laws of
 5 Indiana or any other jurisdiction;
 6 (3) has:
 7 (A) been denied the right to do business in the securities,
 8 commodities, banking, financial services, insurance, real
 9 estate, or real estate appraisal industry; or
 10 (B) had the person's authority to do business in the securities,
 11 commodities, banking, financial services, insurance, real
 12 estate, or real estate appraisal industry revoked or suspended;
 13 by Indiana or by any other state, federal, or foreign governmental
 14 agency or self regulatory organization;
 15 (4) is insolvent;
 16 (5) has violated any provision of this chapter;
 17 (6) has knowingly filed with the ~~commissioner~~ **commission** any
 18 document or statement that:
 19 (A) contains a false representation of a material fact;
 20 (B) fails to state a material fact; or
 21 (C) contains a representation that becomes false after the filing
 22 but during the term of a license or certificate of registration as
 23 provided in subsection (i);
 24 (7) has:
 25 (A) been convicted, within ten (10) years before the date of the
 26 application, renewal, or review, of any crime involving fraud
 27 or deceit; or
 28 (B) had a felony conviction (as defined in IC 35-50-2-1(b))
 29 within five (5) years before the date of the application,
 30 renewal, or review;
 31 (8) if the person is a licensee or principal manager, has failed to
 32 reasonably supervise the person's originators or employees to
 33 ensure their compliance with this chapter;
 34 (9) is on the most recent tax warrant list supplied to the
 35 ~~commissioner~~ **commission** by the department of state revenue; or
 36 (10) has engaged in dishonest or unethical practices in the loan
 37 broker business, as determined by the ~~commissioner~~
 38 **commission**.
 39 (d) The ~~commissioner~~ **commission** may do either of the following:
 40 (1) Censure:
 41 (A) a licensee;
 42 (B) an officer, a director, or an ultimate equitable owner of a

C
o
p
y



- 1 licensee;
 2 (C) a registrant; or
 3 (D) any other person;
 4 who violates or causes a violation of this chapter.
 5 (2) Permanently bar any person described in subdivision (1) from
 6 being:
 7 (A) licensed or registered under this chapter; or
 8 (B) employed by or affiliated with a person licensed or
 9 registered under this chapter;
 10 if the person violates or causes a violation of this chapter.
 11 (e) The ~~commissioner~~ **commission** may not enter a final order:
 12 (1) denying, suspending, or revoking the license of a licensee or
 13 the registration of a registrant; or
 14 (2) imposing other sanctions;
 15 without prior notice to all interested parties, opportunity for a hearing,
 16 and written findings of fact and conclusions of law. However, the
 17 ~~commissioner~~ **commission** may by summary order deny, suspend, or
 18 revoke a license or certificate of registration pending final
 19 determination of any proceeding under this section or before any
 20 proceeding is initiated under this section. Upon the entry of a summary
 21 order, the ~~commissioner~~ **commission** shall promptly notify all
 22 interested parties that the summary order has been entered, of the
 23 reasons for the summary order, and that upon receipt by the
 24 ~~commissioner~~ **commission** of a written request from a party, the matter
 25 will be set for hearing to commence within fifteen (15) business days
 26 after receipt of the request. If no hearing is requested and none is
 27 ordered by the ~~commissioner~~, **commission**, the order remains in effect
 28 until it is modified or vacated by the ~~commissioner~~, **commission**. If a
 29 hearing is requested or ordered, the ~~commissioner~~, **commission**, after
 30 notice of the hearing has been given to all interested persons and the
 31 hearing has been held, may modify or vacate the order or extend it until
 32 final determination.
 33 (f) IC 4-21.5 does not apply to a proceeding under this section.
 34 (g) If a registrant seeks to transfer the registrant's registration to
 35 another licensee who desires to have the registrant engage in
 36 origination activities or serve as a principal manager, whichever
 37 applies, the registrant shall, before the registrant conducts origination
 38 activities or serves as a principal manager for the new employer,
 39 submit to the ~~commissioner~~, **commission**, on a form prescribed by the
 40 ~~commissioner~~, **commission**, a registration application, as required by
 41 section 5 of this chapter.
 42 (h) If the employment of a registrant is terminated, whether:

C
o
p
y



(1) voluntarily by the registrant; or
 (2) by the licensee employing the registrant;
 the licensee that employed the registrant shall, not later than five (5) days after the termination, notify the ~~commissioner~~ **commission** of the termination and the reasons for the termination.

(i) If a material fact or statement included in an application under this chapter changes after the application has been submitted, the applicant shall provide written notice to the ~~commissioner~~ **commission** of the change. The ~~commissioner~~ **commission** may revoke or refuse to renew the license or registration of any person who:

(1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or

(2) would not qualify for licensure or registration under this chapter as a result of the change in a material fact or statement.

SECTION 13. IC 23-2-5-11, AS AMENDED BY P.L.48-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. (a) The ~~commissioner~~ **commission** may do the following:

(1) Adopt rules under IC 4-22-2 to implement this chapter.

(2) Make investigations and examinations:

(A) in connection with any application for licensure or for registration of a licensee or registrant or with any license or certificate of registration already granted; or

(B) whenever it appears to the ~~commissioner~~, **commission**, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public.

(3) Charge as costs of investigation or examination all reasonable expenses, including a per diem ~~prorated upon the salary of the commissioner or employee of a commission member~~ and actual traveling and hotel expenses. All reasonable expenses are to be paid by the party or parties under investigation or examination if the party has violated this chapter.

(4) Issue notices and orders, including cease and desist notices and orders, after making an investigation or examination under subdivision (2). The ~~commissioner~~ **commission** may also bring an action on behalf of the state to enjoin a person from violating this chapter. The ~~commissioner~~ **commission** shall notify the person that an order or notice has been issued, the reasons for it,

C
o
p
y



and that a hearing will be set within fifteen (15) days after the ~~commissioner~~ **commission** receives a written request from the person requesting a hearing.

(5) Sign all orders, official certifications, documents, or papers issued under this chapter or delegate the authority to sign any of those items to a deputy.

(6) Hold and conduct hearings.

(7) Hear evidence.

(8) Conduct inquiries with or without hearings.

(9) Receive reports of investigators or other officers or employees of the state of Indiana or of any municipal corporation or governmental subdivision within the state.

(10) Administer oaths, or cause them to be administered.

(11) Subpoena witnesses, and compel them to attend and testify.

(12) Compel the production of books, records, and other documents.

(13) Order depositions to be taken of any witness residing within or without the state. The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the ~~commissioner~~ **commission**.

(14) Order that each witness appearing under the ~~commissioner's~~ **commission's** order to testify before the ~~commissioner~~ **commission** shall receive the fees and mileage allowances provided for witnesses in civil cases.

(15) Provide interpretive opinions or issue determinations that the ~~commissioner~~ **commission** will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. The ~~commissioner~~ **commission** may adopt rules to establish fees for individuals requesting an interpretive opinion or a determination under this subdivision. A person may not request an interpretive opinion or a determination concerning an activity that:

(A) occurred before; or

(B) is occurring on;

the date the opinion or determination is requested.

(b) If a witness, in any hearing, inquiry, or investigation conducted under this chapter, refuses to answer any question or produce any item, the ~~commissioner~~ **commission** may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may

C
o
p
y



1 refuse to answer the question or produce the item. If the court
 2 determines that the witness, based upon the witness's privilege against
 3 self-incrimination, may properly refuse to answer or produce an item,
 4 the ~~commissioner~~ **commission** may make a written request that the
 5 court grant use immunity to the witness. Upon written request of the
 6 ~~commissioner~~, **commission**, the court shall grant use immunity to a
 7 witness. The court shall instruct the witness, by written order or in open
 8 court, that:

9 (1) any evidence the witness gives, or evidence derived from that
 10 evidence, may not be used in any criminal proceedings against
 11 that witness, unless the evidence is volunteered by the witness or
 12 is not responsive to a question; and

13 (2) the witness must answer the questions asked and produce the
 14 items requested.

15 A grant of use immunity does not prohibit evidence that the witness
 16 gives in a hearing, investigation, or inquiry from being used in a
 17 prosecution for perjury under IC 35-44-2-1. If a witness refuses to give
 18 the evidence after the witness has been granted use immunity, the court
 19 may find the witness in contempt.

20 (c) In any prosecution, action, suit, or proceeding based upon or
 21 arising out of this chapter, the ~~commissioner~~ **commission** may sign a
 22 certificate showing compliance or noncompliance with this chapter by
 23 any person. This shall constitute prima facie evidence of compliance
 24 or noncompliance with this chapter and shall be admissible in evidence
 25 in any action at law or in equity to enforce this chapter.

26 (d) If:

27 (1) a person disobeys any lawful:

28 (A) subpoena issued under this chapter; or

29 (B) order or demand requiring the production of any books,
 30 accounts, papers, records, documents, or other evidence or
 31 information as provided in this chapter; or

32 (2) a witness refuses to:

33 (A) appear when subpoenaed;

34 (B) testify to any matter about which the witness may be
 35 lawfully interrogated; or

36 (C) take or subscribe to any oath required by this chapter;

37 the circuit or superior court of the county in which the hearing, inquiry,
 38 or investigation in question is held, if demand is made or if, upon
 39 written petition, the production is ordered to be made, or the
 40 ~~commissioner~~ **commission** or a hearing officer appointed by the
 41 ~~commissioner~~, **commission** shall compel compliance with the lawful
 42 requirements of the subpoena, order, or demand, compel the production

C
o
p
y



of the necessary or required books, papers, records, documents, and other evidence and information, and compel any witness to attend in any Indiana county and to testify to any matter about which the witness may lawfully be interrogated, and to take or subscribe to any oath required.

(e) If a person fails, refuses, or neglects to comply with a court order under this section, the person shall be punished for contempt of court.

SECTION 14. IC 23-2-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 12. Copies of any statement or document filed with the ~~commissioner~~, ~~commission~~, and copies of any records of the ~~commissioner~~, ~~commission~~, certified to by the ~~commissioner or any deputy~~ ~~commission~~ are admissible in any prosecution, action, suit, or proceeding based upon, or arising out of or under, the provisions of this chapter to the same effect as the original of the statement, document, or record would be if actually produced.

SECTION 15. IC 23-2-5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. Upon:

(1) disobedience on the part of any person to any lawful subpoena issued under this chapter, or to any lawful order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or information as provided in this chapter; or

(2) the refusal of any witness to appear when subpoenaed, to testify to any matter regarding which the witness may be lawfully interrogated, or to take or subscribe to any oath required by this chapter;

it shall be the duty of the circuit or superior court of the county in which the hearing or inquiry or investigation in question is being or is to be held, where demand is made, or where the production is ordered to be made, upon written petition of the ~~commissioner~~, ~~commission~~, to compel obedience to the lawful requirements of the subpoena, order, or demand.

SECTION 16. IC 23-2-5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 14. (a) If the ~~commissioner~~ ~~commission~~ determines, after a hearing, that a person has violated this chapter, the ~~commissioner~~ ~~commission~~ may, in addition to all other remedies, impose a civil penalty upon the person in an amount not to exceed ten thousand dollars (\$10,000) for each violation.

(b) The ~~commissioner~~ ~~commission~~ may bring an action in the circuit or superior court of Marion County to enforce payment of any penalty imposed under this section.

C
o
p
y



SECTION 17. IC 23-2-5-16, AS AMENDED BY P.L.230-2007, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16. (a) Except as provided in subsection (b), a person who knowingly violates this chapter commits a Class D felony.

(b) A person commits a Class C felony if the person knowingly makes or causes to be made:

(1) in any document filed with or sent to the ~~commissioner~~ **commission** or the securities division; or

(2) in any proceeding, investigation, or examination under this chapter;

any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

SECTION 18. IC 23-2-5-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. (a) Each loan broker agreement shall be given an account number. Each licensee shall keep and maintain the following records or their electronic equivalent:

(1) A file for each borrower or proposed borrower that contains the following:

(A) The name and address of the borrower or any proposed borrower.

(B) A copy of the signed loan broker agreement.

(C) A copy of any other papers or instruments used in connection with the loan broker agreement and signed by the borrower or any proposed borrower.

(D) If a loan was obtained for the borrower, the name and address of the creditor.

(E) If a loan is accepted by the borrower, a copy of the loan agreement.

(F) The amount of the loan broker's fee that the borrower has paid. If there is an unpaid balance, the status of any collection efforts.

(2) All receipts from or for the account of borrowers or any proposed borrowers and all disbursements to or for the account of borrowers or any proposed borrowers, recorded so that the transactions are readily identifiable.

(3) A general ledger that shall be posted at least monthly, and a trial balance sheet and profit and loss statement prepared within thirty (30) days of the ~~commissioner's~~ **commission's** request for the information.

(4) A sample of:

(A) all advertisements, pamphlets, circulars, letters, articles,

C
o
p
y



or communications published in any newspaper, magazine, or periodical;

(B) scripts of any recording, radio, or television announcement; and

(C) any sales kits or literature;

to be used in solicitation of borrowers.

(b) The records listed in subsection (a) shall be kept for a period of two (2) years in the licensee's principal office and must be separate or readily identifiable from the records of any other business that is conducted in the office of the loan broker.

SECTION 19. IC 23-2-5-19, AS AMENDED BY P.L.230-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 19. (a) The following persons are exempt from the requirements of sections 4, 5, 6, 9, 17, 18, and 21 of this chapter:

(1) Any attorney while engaging in the practice of law.

(2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).

(3) Any person licensed as a real estate broker or salesperson under IC 25-34.1 to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.

(4) Any broker-dealer, agent, or investment advisor registered under IC 23-19.

(5) Any person that:

(A) procures;

(B) promises to procure; or

(C) assists in procuring;

a loan that is not subject to the Truth in Lending Act (15 U.S.C. 1601 through 1667e).

(6) Any community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from the Indiana housing and community development authority established by IC 5-20-1-3.

(7) The Indiana housing and community development authority.

(8) Subject to subsection (e), and except as provided in subsection (f), any person authorized to:

(A) sell and service a loan for the Federal National Mortgage Association or the Federal Home Loan Mortgage Association;

(B) issue securities backed by the Government National Mortgage Association;

C
o
p
y



(C) make loans insured by the United States Department of Housing and Urban Development or the United States Department of Agriculture Rural Housing Service;

(D) act as a supervised lender or nonsupervised automatic lender of the United States Department of Veterans Affairs; or

(E) act as a correspondent of loans insured by the United States Department of Housing and Urban Development, if the person closes at least twenty-five (25) such insured loans in Indiana during each calendar year.

(9) Any person who is a creditor, or proposed to be a creditor, for any loan.

(b) As used in this chapter, "bona fide third party fee" includes fees for the following:

(1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8.

(2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey, and similar purposes.

(3) The services provided by a loan broker in procuring possible business for a lending institution if the fees are paid by the lending institution.

(c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this chapter is on the party claiming the exemption or classification.

(e) A person claiming an exemption under subsection (a)(8) shall, as a condition to receiving or maintaining the exemption, file a notice every twenty-four (24) months on a form acceptable to the ~~commissioner~~ **commission**. The notice required under this subsection must:

(1) provide the name and business address of each originator employed by the person to originate loans in Indiana;

(2) include all other information required by the ~~commissioner~~ **commission**; and

(3) be accompanied by a fee of four hundred dollars (\$400).

If any information included in a notice under this subsection changes after the notice has been submitted, the person shall provide written notice to the ~~commissioner~~ **commission** of the change. The ~~commissioner's~~ **commission's** receipt of a notice under this subsection shall not be considered to be a determination or confirmation by the

C
o
p
y



~~commissioner~~ **commission** of the validity of the claimed exemption.

(f) An exemption described in subsection (a)(8) does not extend to:

(1) a subsidiary of the exempt person; or

(2) an unaffiliated third party.

An exemption that applies to a person under subsection (a)(8)(D) does not extend to a registered United States Department of Veterans Affairs agent.

SECTION 20. IC 23-2-5-21, AS AMENDED BY P.L.230-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 21. (a) A person applying for an initial license or certificate of registration must provide to the ~~commissioner~~ **commission** evidence that during the twenty-four (24) month period immediately preceding the application that the person completed at least twenty-four (24) hours of academic instruction, acceptable to the ~~commissioner~~; **commission**, related to the loan brokerage business. To maintain a license or registration under this chapter, a person must provide to the ~~commissioner~~ **commission** evidence that the person has completed at least six (6) hours of academic instruction that is:

(1) acceptable to the ~~commissioner~~; **commission**; and

(2) related to the loan brokerage business;

during each calendar year after the year in which the license or registration was initially issued.

(b) In determining the acceptability of academic instruction the ~~commissioner~~ **commission** shall give consideration to approval of a licensee's internal academic instruction programs completed by employees.

(c) In determining the acceptability of an education course, the ~~commissioner~~ **commission** may require a fee, in an amount prescribed by the ~~commissioner~~ **commission** by rule or order, for the ~~commissioner's~~ **commission's** review of the course.

SECTION 21. IC 23-2-5-22, AS ADDED BY P.L.48-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 22. (a) An appeal may be taken by:

(1) any loan broker or principal upon whose application for registration for a loan broker license is granted or denied, from any final order of the ~~commissioner~~ **commission** concerning the application or registration;

(2) any applicant for registration as a loan broker or originator, from any final order of the ~~commissioner~~ **commission** affecting the application or registration as a loan broker or originator;

(3) any person against whom a civil penalty is imposed under section 14(a) of this chapter, from the final order of the

C
o
p
y



~~commissioner~~ **commission** imposing the civil penalty; or

(4) any person who is named as a respondent, from any final order issued by the ~~commissioner~~ **commission** under section 10 or 11 of this chapter;

to the Marion circuit court or to the circuit or superior court of the county where the person taking the appeal resides or maintains a place of business.

(b) Not later than twenty (20) days after the entry of the order, the ~~commissioner~~ **commission** shall be served with:

(1) a written notice of the appeal stating the court to which the appeal will be taken and the grounds upon which a reversal of the final order is sought;

(2) a demand in writing from the appellant for a certified transcript of the record and of all papers on file in the ~~commissioner's~~ **commission's** office affecting or relating to the order; and

(3) a bond in the penal sum of five hundred dollars (\$500) to the state of Indiana with sufficient surety to be approved by the ~~commissioner~~, **commission**, conditioned upon the faithful prosecution of the appeal to final judgment and the payment of all costs that are adjudged against the appellant.

(c) Not later than ten (10) days after the ~~commissioner~~ **commission** is served with the items listed in subsection (b), the ~~commissioner~~ **commission** shall make, certify, and deliver to the appellant the transcript, and the appellant shall, not later than five (5) days after the date the appellant receives the transcript, file the transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal serves as the appellant's complaint. The ~~commissioner~~ **commission** may appear and file any motion or pleading and form the issue. The cause shall be entered on the trial calendar for trial de novo and given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent oral or written evidence concerning the order of the ~~commissioner~~ **commission** from which the appeal is taken. If the order of the ~~commissioner~~ **commission** is reversed, the court shall in its mandate specifically direct the ~~commissioner~~ **commission** as to the ~~commissioner's~~ **commission's** further action in the matter. The ~~commissioner~~ **commission** is not barred from revoking or altering the order for any proper cause that accrues or is discovered after the order is entered. If the order is affirmed, the appellant is not barred after thirty (30) days from the date the order is affirmed from filing a new application if the application is not otherwise barred or limited. During the pendency of the appeal, the

C
o
p
y



1 order from which the appeal is taken is not suspended but remains in
 2 effect unless otherwise ordered by the court. An appeal may be taken
 3 from the judgment of the court on the same terms and conditions as an
 4 appeal is taken in civil actions.

5 SECTION 22. [EFFECTIVE JULY 1, 2008] (a) **The definitions in**
 6 **IC 23-2-5, as amended by this act, apply to this SECTION.**

7 (b) **The duties conferred on the office of the secretary of state**
 8 **relating to the licensing of loan brokers and the registration of**
 9 **originators and principal managers under IC 23-2-5, as amended**
 10 **by this act, are transferred to the commission on July 1, 2008.**

11 (c) **The rules adopted by the office of the secretary of state**
 12 **concerning the licensing of loan brokers and the registration of**
 13 **originators and principal managers under IC 23-2-5, as amended**
 14 **by this act, are considered, after June 30, 2008, rules of the**
 15 **commission until the commission adopts replacement rules.**

16 (d) **On July 1, 2008, the commission becomes the owner of all**
 17 **property relating to the licensing of loan brokers and the**
 18 **registration of originators and principal managers under**
 19 **IC 23-2-5, as amended by this act, of the office of the secretary of**
 20 **state.**

21 (e) **Any appropriation to the office of the secretary of state and**
 22 **funds relating to the licensing of loan brokers and the registration**
 23 **of originators and principal managers under IC 23-2-5, as**
 24 **amended by this act, under the control or supervision of the office**
 25 **of the secretary of state on June 30, 2008, are transferred to the**
 26 **control and supervision of the commission on July 1, 2008.**

27 (f) **This SECTION expires January 1, 2009.**

C
O
P
Y

